LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
OCT 10 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 401

CHEMICAL BANK NEW YORK TRUST COMPANY,
TRUSTEE, MORTGAGEE, *Petitioner*,

v.

STEAMSHIP WESTHAMPTON (FORMERLY STEAMSHIP MONTAUK POINT), HER ENGINES, BOILERS, ETC.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

OBJECTION OF RESPONDENTS FERTEX STEAMSHIP CORPORATION, CALTEX (OVERSEAS) LTD., TEXACO INC., TRUSTEES OF SEAFARERS VACATION PLAN, AND THEODORE W. KHEEL AND RAYMOND J. SCULLY, TRUSTEES IN REORGANIZATION PROCEEDINGS FOR SEATRADE CORPORATION, TO MOTION OF THE GOVERNMENT OF THE BUNDESREPUBLIK DEUTSCHLAND FOR LEAVE TO FILE BRIEF AMICUS CURIAE, AND BRIEF IN REPLY TO BRIEF AMICUS CURIAE

JOHN J. FOLEY,
Of Counsel for Fertex Steamship Corporation.
ARTHUR M. BOAL, JR.,
Of Counsel for Caltex (Overseas) Ltd. and Texaco Inc.

DAVID R. OWEN,
WILLIAM R. DORSEY, III,
10 Light Street,
Baltimore, Maryland,
Counsel for Fertex Steamship Corporation, Caltex (Overseas) Ltd. & Texaco Inc., Respondents.

SOL C. BERENHOLTZ,
SOLOMON KAPLAN,
10 Light Street,
Baltimore, Maryland,
Counsel for Trustees of Seafarers Vacation Plan, Respondent.

ROBERT H. WILLIAMS, JR.,
ISAAC N. P. STOKES,
Of Counsel for Respondents Theodore W. Kheel and Raymond J. Scully, Trustees in Reorganization Proceedings for Seatrade Corporation.

BETHUEL M. WEBSTER,
One Rockefeller Plaza,
New York, New York 10020,
Counsel for Respondents Theodore W. Kheel and Raymond J. Scully, Trustees in Reorganization Proceedings for Seatrade Corporation.

October 7, 1966.

The Daily Record Co., Baltimore, Md. 21203

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 401

CHEMICAL BANK NEW YORK TRUST COMPANY,
TRUSTEE, MORTGAGEE, *Petitioner*,

v.

STEAMSHIP WESTHAMPTON (FORMERLY STEAMSHIP MONTAUK POINT), HER ENGINES, BOILERS, ETC.,
Respondent.

OBJECTION OF RESPONDENTS FERTEX STEAMSHIP CORPORATION, CALTEX (OVERSEAS) LTD., TEXACO INC., TRUSTEES OF SEAFARERS VACATION PLAN, AND THEODORE W. KHEEL AND RAYMOND J. SCULLY, TRUSTEES IN REORGANIZATION PROCEEDINGS FOR SEATRADE CORPORATION, TO MOTION OF THE GOVERNMENT OF THE BUNDESREPUBLIK DEUTSCHLAND FOR LEAVE TO FILE BRIEF AMICUS CURIAE

Fertex Steamship Corporation, Caltex (Overseas) Ltd., Texaco Inc., Trustees of Seafarers Vacation Plan, and Theodore W. Kheel and Raymond J. Scully, Trustees in

Reorganization Proceedings for Seatrade Corporation, Respondents, have declined to consent to the filing of a brief amicus curiae by the Government of the Bundesrepublik Deutschland (German Government) and oppose the motion of said Government for leave to file brief amicus curiae for the following reasons:

1. The motion of the German Government is not timely filed within Supreme Court Rule 42. The Petition for Writ of Certiorari was filed on July 29, 1966. Briefs in opposition to the petition were filed on September 29, 1966. The German Government waited until the day after the Briefs in Opposition were filed before filing it's motion.

2. The motion sets forth no facts or questions of law which have not already been adequately presented by the Petition and the briefs. It, therefore, does not comply with Rule 42. The statement at Page 4 of the proposed brief of the German Government to the effect that the case is "of substantial general importance in a manner which has not previously been noted" is entirely inaccurate. The Petition makes the same untenable point as the German Government's proposed brief that the statute constituted an illegal discrimination against foreign investors (Petition, pp. 13, 16-17).

Wherefore, Respondents move that the motion of the Government of the Bundesrepublik Deutschland be denied, or, in the alternative, if the motion be granted, that the annexed Brief in Reply to the Brief of the Government of the Bundesrepublik Deutschland be received.

Respectfully submitted,

JOHN J. FOLEY,
Of Counsel for Fertex Steamship Corporation.

ARTHUR M. BOAL, JR.,
Of Counsel for Caltex (Overseas) Ltd. and Texaco Inc.

DAVID R. OWEN,
WILLIAM R. DORSEY, III,
10 Light Street,
Baltimore, Md. 21202,
Counsel for Fertex Steamship Corporation, Caltex (Overseas) Ltd. & Texaco Inc., Respondents.

SOL C. BERENHOLTZ,
SOLOMON KAPLAN,
10 Light Street,
Baltimore, Md. 21202,
Counsel for Trustees of Seafarers Vacation Plan, Respondent.

ROBERT H. WILLIAMS, JR.,
ISAAC N. P. STOKES,
Of Counsel for Respondents Theodore W. Kheel and Raymond J. Scully, Trustees in Reorganization Proceedings for Seatrade Corporation.

BETHUEL M. WEBSTER,
One Rockefeller Plaza,
New York, N.Y. 10020
Counsel for Respondents Theodore W. Kheel and Raymond J. Scully, Trustees in Reorganization Proceedings for Seatrade Corporation.

October 7, 1966.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 401

CHEMICAL BANK NEW YORK TRUST COMPANY, TRUSTEE, MORTGAGEE, *Petitioner*,

v.

STEAMSHIP WESTHAMPTON (FORMERLY STEAMSHIP MONTAUK POINT), HER ENGINES, BOILERS, ETC., *Respondent*.

BRIEF FOR RESPONDENTS FERTEX STEAMSHIP CORPORATION, CALTEX (OVERSEAS) LTD., TEXACO INC., TRUSTEES OF SEAFARERS VACATION PLAN, AND THEODORE W. KHEEL AND RAYMOND J. SCULLY, TRUSTEES IN REORGANIZATION PROCEEDINGS FOR SEATRADE CORPORATION, IN REPLY TO BRIEF OF THE GOVERNMENT OF THE BUNDESREPUBLIK DEUTSCHLAND

1. The decision of the Court of Appeals and Public Law No. 89-346 do not in any sense discriminate against German

citizens, as such, as suggested in the proposed brief. The same result would have been reached had the investors been of any other foreign nationality. It is, of course, true that the Court treated alien investors differently from the manner in which it would have treated United States investors. This is because Congress, in the articulation of the national maritime policy, specifically so required in the Shipping Act of 1916, the Ship Mortgage Act of 1920, etc. The discrimination argument now proposed by the German Government was completely and forcibly answered by Senator Bartlett as quoted at pages 12-14 of Respondents Fertex Steamship Corporation et al Brief in Opposition, to which this Court is again referred.

2. The reference at Page 4 of the proposed brief to the "established rulings and procedures" of the government agencies is incomplete and misleading. No reference is made to the rulings of the Shipping Board which support the decision below. See pages 17-18 of Respondents Fertex Steamship Corporation et al Brief in Opposition.

3. The exemption in Public Law 89-346 of pending litigation is not "ambiguous" as stated at Page 4 of the proposed brief. On the contrary the exemption is crystal clear on its face and buttressed with a complete legislative history. See pages 9-11 of Respondents Fertex Steamship Corporation et al Brief in Opposition and page 9 of Respondents Theodore W. Kheel and Raymond J. Scully's Brief in Opposition.

4. The proposed brief cites no authorities and contains no reference to the record. It is nothing but counsel's *ipse dixit*.

Wherefore, for the aforegoing reasons and for the reasons set forth in Respondents' Briefs in Opposition, it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

JOHN J. FOLEY,
Of Counsel for Fertex Steamship Corporation.

ARTHUR M. BOAL, JR.,
Of Counsel for Caltex (Overseas) Ltd. and Texaco Inc.

DAVID R. OWEN,
WILLIAM R. DORSEY, III,
10 Light Street,
Baltimore, Md. 21202,
Counsel for Fertex Steamship Corporation, Caltex (Overseas) Ltd. & Texaco Inc., Respondents.

SOL C. BERENHOLTZ,
SOLOMON KAPLAN,
10 Light Street,
Baltimore, Md. 21202,
Counsel for Trustees of Seafarers Vacation Plan, Respondent.

ROBERT H. WILLIAMS, JR.,
ISAAC N. P. STOKES,
Of Counsel for Respondents Theodore W. Kheel and Raymond J. Scully, Trustees in Reorganization Proceedings for Seatrade Corporation.

BETHUEL M. WEBSTER,
One Rockefeller Plaza,
New York, N.Y. 10020,
Counsel for Respondents Theodore W. Kheel and Raymond J. Scully, Trustees in Reorganization Proceedings for Seatrade Corporation.

October 7, 1966.